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## FISCAL IMPACT REPORT

SPONSOR Smith DATE TYPED 2/12/05 HB \_\_\_\_\_

SHORT TITLE Off-Reservation Tribal Gaming SB 542

ANALYST Hanika-Ortiz

### REVENUE

| Estimated Revenue |               | Subsequent<br>Years Impact | Recurring<br>or Non-Rec | Fund<br>Affected |
|-------------------|---------------|----------------------------|-------------------------|------------------|
| FY05              | FY06          |                            |                         |                  |
|                   | See Narrative | See Narrative              | Recurring               |                  |

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Gaming Control Board (GCB)

NM Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

SB 542 amends several sections of the Gaming Control Act providing for another class of licensed gaming operator called "general business" issued in areas of off-reservation tribal gaming establishments that hold a liquor license, lodging enterprises, restaurants, or "other" businesses, and limits the licensee to 25 gaming machines. It also provides the nonprofits and racetracks the ability to provide other forms of gaming.

The bill contains an emergency clause.

Section 1 requires the GCB develop rules regarding issuance of licenses for off-reservation gaming. Section 2 creates a new "general business" category of gaming operator licenses for off-reservation tribal gaming establishments. Section 3 and 4 permit racetracks and non-profit organizations to offer other gaming pursuant to rules. Section 5 requires racetracks and other general business licensees to expend no less than 1/2% of their net take to fund or support compulsive gambler programs.

#### Significant Issues

The AGO has the following comment:

Perhaps the most significant legal issue arises from the fact that the Tribal/State Gaming Compacts provide for revenue sharing by the Tribes, in return for which the State agrees that the Tribes have the exclusive right to conduct Class III gaming. That right is subject to an exception for gaming machines, which, generally, the State may permit on a limited basis for racetracks and for veterans' and fraternal organizations. Contrary to the Compacts, SB 542 authorizes the State to issue gaming operator licenses to entities other than these listed organizations to operate gaming machines.

The Compacts further provide that the parties' revenue-sharing agreement will terminate if the State allows an expansion of non-tribal Class III gaming in the State. This bill would expand gaming activities to general businesses in those areas where off-reservation gaming is conducted and, thus, would appear to constitute a legislative action directly or indirectly attempting to restrict, or have the effect of restricting, the scope or extent of Indian gaming in violation of the Compact provisions. So a result, if SB 542 were enacted it would appear to terminate the tribes' revenue sharing payment obligations under the Compact.

### **PERFORMANCE IMPLICATIONS**

The GCB notes concerns that SB 542 will significantly expand gaming without creating a tourist market because it limits venues to 25 gaming machines and fails to attract out-of-state visitors. The definition of "game" may be too broad and would need to be narrowed down.

### **FISCAL IMPLICATIONS**

The GCB reports there will be an unknown increase in the state's gaming tax revenue based on an increased number of gaming venues due to the expansion.

The AGO notes a potential loss of revenue sharing arrangement with tribal casinos that bring an estimated \$38 million dollars of annual revenue into the State. Expanding the use of electronic gaming devices would terminate the Tribes' obligation to make revenue sharing payments. However, the added revenue from the expanded use of gaming machines might make up a significant portion, if not all, of the revenue lost from revenue sharing from the Tribes.

### **ADMINISTRATIVE IMPLICATIONS**

The GCB reports gaming expansion will require additional staff to regulate, audit, and process the increase in the number of licensed gaming operators. New rules would need to be adopted for other types of gaming, new forms and procedures created, and trainings.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to SB 384, Gaming Control Board Powers & Duties  
Relates to SB 431, Compulsive Gambler Funds & Programs

### **TECHNICAL ISSUES**

The GCB notes gaming facilities will need to be placed on the central monitoring system and significant expansion of the system would be required.

**OTHER SUBSTANTIVE ISSUES**

The GCB would have authority to issue gaming operator licenses to businesses that hold a liquor license. The Liquor Control Act prohibits a licensee from allowing commercial gambling on the licensed premises.

SB 542 permits non-profit organizations to offer other games; however, the Bingo and Raffle Act makes it lawful for certain nonprofit organizations to conduct only specified "games of chance".

**ALTERNATIVES**

None noted

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

Existing law will remain unchanged.

AHO/lg:yr